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CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

## Notification

The 21st March, 2024

**No. 13/1/9519-HII(2)-2024/4747.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **74/2018** dated **09.01.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

BHARAT SHANKER, S/O SHRI RATTAN SHANKER, R/O H.NO.197, GREEN ENCLAVE, V.P.O. DAUN, BALLOMAJRA, DISTRICT S.A.S. NAGAR (MOHALI) (PUNJAB). (Workman)

AND

1. THE DAINIK BHASKAR CORPORATION LIMITED, 280, BHASKAR HOUSE, NEAR YMCA CLUB, MAKARBA, SARKHEJ GANDHI NAGAR ROAD, AHMEDABAD 380051 (REGISTERED OFFICE).
2. THE DAINIK BHASKAR CORPORATION LIMITED, DAINIK BHASKAR, HEAD OFFICE, 6, PRESS COMPLEX, RAM GOPAL MAHESHWARI MARG, ZONE-1, MAHARANA PARTAP NAGAR, BHOPAL, M.P (HEAD OFFICE) THROUGH IT'S
  - A) RAMESH CHANDER AGGARWAL, CHAIRMAN,
  - B) SUDHIR AGGARWAL, MANAGING DIRECTOR,
  - C) GARISH AGGARWAL, MANAGING DIRECTOR,
  - D) PAWAN AGGARWAL, MANAGING DIRECTOR.
3. THE DAINIK BHASKAR CORPORATION LIMITED, PLOT NO. 11-12, SECTOR 25, CHANDIGARH THROUGH ITS ASSISTANT GENERAL MANAGER HR CPH2.
4. THE DAINIK BHASKAR CORPORATION LIMITED, DAINIK BHASKAR, PLOT NO. 11-12, SECTOR 25, CHANDIGARH THROUGH ITS AND PUBLISHER.
5. THE DAINIK BHASKAR CORPORATION LIMITED, PLOT NO. 11-12, SECTOR 25, CHANDIGARH THROUGH ITS FINANCE HEAD, REPORTING AUTHORITY OF THE CLAIMANT. (Management)

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## AWARD

1. Vide Endorsement No.13/1/9519-HII(2)-2018/11378 Dated 26.07.2018 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the claim application filed by Bharat Shanker (*here-in-after referred "workman"*) to The Dainik Bhaskar Corporation Limited & Others (*here-in-after referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*here-in-after in short referred "Act 1955"*) in following words:-

*"Whether the arrears of revision of pay to Shri Bharat Shanker; S/o Shri Rattan Shanker; R/o H.No.197, Green Enclave, V.P.O. Daun, Ballomajra, District S.A.S. Nagar (Mohali) (Punjab) (Applicant/Claimant) were to be paid by 1. The Dainik Bhaskar Corporation Limited, 280, Bhaskar House, Near YMCA Club, Makarba, Sarkhej-Gandhi Nagar Road, Ahmedabad 380051 (Registered Office). 2. The Dainik Bhaskar Corporation Limited, Dainik Bhaskar, Head Office, 6, Press Complex, Ram Gopal Maheshwari Marg, Zone-1, Maharana partap Nagar, Bhopal, M.P (Head Office) through it's a) Ramesh Chander Aggarwal, Chairman, b) Sudhir Aggarwal, managing Director, c) Garish Aggarwal, Managing Director, d) Pawan Aggarwal, Managing Director. 3. The Dainik Bhaskar Corporation Limited, Plot No. 11-12, Sector 25, Chandigarh through its Assistant General Manager HR CPH2. 4. The Dainik Bhaskar Corporation Limited, Dainik Bhaskar, Plot No. 11-12, Sector 25, Chandigarh through its and Publisher. 5. The Dainik Bhaskar Corporation Limited, Plot No. 11-12, Sector 25, Chandigarh through its Finance Head, Reporting authority of the claimant (Respondents) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"*

2. Upon notice, the claimant-workman appeared in person and thereafter through his Representative. On 05.12.2018, statement of claim was filed.

3. Briefly stated the averments of claim statement are that the workman was appointed as Executive on 15.01.2001 by Dainik Bhaskar at Chandigarh and his employee code is CHD00721 and provident fund account No.PB/CHD/0020989/0000359. The service of workman remained in continuous, uninterrupted without any stopgap and unblemished till 10.02.2012 on which date the workman himself resigned from the said post. On 04.03.2009 the Central Government in exercise of powers under Sections 9 & 13 of the Working Journalists & Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (*here-in-after in short referred as 'Act 1955'*) constituted Majithia Wage Board for provision and revision of pay scales and other benefits for the working journalists and non-journalists working in printing media. The said Majithia Wage Board submitted its recommendations to the Central Government on 31.12.2010 and same was accepted by the Government of India on 25.10.2011 and notified the same vide SO No.2532(E) dated 11.11.2011. The said recommendations were challenged by various parties of media before the Hon'ble Supreme Court in writ petition (C) No.246/2011 tilted ABP Pvt. Ltd. & Others Versus Union of India & Others and other connected writ petitions. The Hon'ble Supreme Court vide its judgment dated 07.02.2014 upheld the above said notification of Government of India which was based on the recommendation of the Majithia Wage Board and dismissed the writ petitions filed by various parties. As evident from this judgment of Hon'ble Supreme Court of India, directions in that were also issued for the payment of wages as revised / determined from 11.11.2011 i.e. the arrears up to March 2014 to be paid to all eligible persons in 4 equal installments within a period of one year from the date of judgment and continue to pay the revised wages from April 2014 onwards. The workman was in service as on the date of above said judgment of Hon'ble Supreme Court of India but he was not given the benefits as per the above said notification and the judgment of the Hon'ble Supreme Court rather he continued to receive whatever lump sum was being paid to him. It was due to this reason that the workman had to resign

from his service. The workman is covered by the recommendations of the Majithia Wage Board as accepted by the Government of India as per notification dated 11.11.2011 which was affirmed by the Hon'ble Supreme Court of India and as such the workman is entitled for provisions and revision of revised pay scale / wages w.e.f. 11.11.2011 till 10.02.2012. Instead of implementing the above said notification and the judgment of Hon'ble Supreme Court, the authorities of Dainik Bhaskar have been forcing its employees including workman to sign a declaration stating that we are happy with the current wages and do not want the benefits of the recommendations of the Majithia Wage Board or that of the directions of the Hon'ble Supreme Court dated 07.02.2014 failing which they would be transferred to other places that too in other States. Despite the said notification and judgment of the Hon'ble Supreme Court of India, the workman has not been paid the arrears of his revised pay w.e.f. 11.11.2011 to 10.02.2012. The personal visits, contacts and requests of the workman to the management for making him the payment of arrears remained futile and as such constrained him to adopt this process of law. As per the above said notification the pay scale, salary of the workman is required to be fixed as per Table - II B - Non-journalists (Administrative Staff) in the pay scale of Group II i.e. ₹14,000/- + annual rate of increments at the rate of 4% - 30700/- with variable pay of 35% of basic pay, DA as admissible biannually, HRA @ 20% of basic pay, medical allowance of ₹500/- per month fixed and transport allowance @ 10% of basic pay as the annual turn-overs of the management remained in between 500 to 1000 crores for the year 2007-08, year 2008-09 and year 2009-10 for which the workman is entitled and eligible. In this connection calculation sheet prepared and authenticated by the registered Chartered Accountant on the basis of annual turn overs for the year 2007-08, 2008-09, 2009-10 generated against ID number of workman is enclosed with the claim statement. In view of the above, the arrears including the interim relief of the workman from 11.11.2011 to 10.02.2012 work out to ₹ 8,99,362/- as per the calculation sheet for which the workman is entitled and eligible. The emolument has not paid the above mentioned dues to the workman and deliberately delayed in making the payment of the same. The workman is entitled to interest @18% per annum on the same w.e.f. 11.11.2011 till the date of actual payment. In response to demand notice dated 07.10.2016 the management filed reply to which the replication dated 21.09.2017 was also filed by the workman before the Labour Commissioner, U.T. Chandigarh. The above said notification was not implemented by the managements of different print medias, a number of contempt petition remained filed before the Hon'ble Supreme of India attached with the main content petition No.411 of 2014 which were disposed off by the Hon'ble Supreme Court of India vide order dated 13.10.2017. A number of references remained pending before the Labour Authorities / Labour Courts for all these years regarding non-payment of arrears and wages to the working journalists and non-journalists. The Hon'ble Supreme Court of India passed another order dated 13.10.2017 in miscellaneous application No.187 of 2017 in the said contempt petition (c) No.411 of 2014 therewith ordering the concerned Labour Court / Industrial Tribunals to dispose of matters as expeditiously as possible, preferably within 6 months of the reference being made. The workman is entitled and eligible to all the arrears including the interim relief as worked out and authenticated by the Chartered Accountant as per the calculation sheet enclosed with the claim statement. In view of the facts & circumstances, the workman has been deprived of his due arrears including interim relief by the management that too without assigning any reason and deliberately, the claim application deserves to be decided at the earliest by this Hon'ble Court. The prayer is made that the claim statement may be allowed in favour of the workman and against the management with directions No.i) to the management to pay all the arrears (including interim relief) and interest @18% per annum w.e.f. 11.11.2011 till the date of actual payment as per the calculation sheet attached with the claim statement. ii) to the appropriate authority (Labour Commissioner/Deputy Commissioner) to issue the recover certificate accordingly in the interest of justice and other orders or directions as deemed fit and proper may be issued in favour of the workman.

4. On notice, management No.1 to 5 contested the claim statement by filing joint written statement on 01.03.2019 wherein preliminary objections are raised on the ground that the workman has filed fresh claim petition claiming the arrears of wages for the period of 11.11.2011 to 31.08.2014 as per the recommendation of the Majithia Wage Board by putting the wrong facts as well as by levelling the pass allegations and by presenting the fabricated calculation sheet before this Tribunal and as such the present claim petition is liable to be dismissed with exemplary costs. Besides, the workman does not fall under the definition of 'workman' as per

Section 2(s) ii) to iv) of the ID Act. The workman has presented misleading facts before this Hon'ble Tribunal as on the one hand he claims that he had resigned from duty on 10.02.2012 and on the other hand he claimed that he was in service on the date of the judgment passed by the Hon'ble Supreme Court of India i.e. 07.02.2014 as such the present claim petition is liable to be dismissed. Further objection is taken on the ground that the claim petition is liable to be dismissed on the ground of mis-joinder of necessary party as the alleged services rendered by the workman with the answering respondent i.e. Chief Manager HR (who has not been impleaded as party in the present claim petition) and the authorities of Head Office have been impleaded by name. As per the facts of the recommendations of the Majithia Wage Board were submitted to the Central Government on 31.12.2010 and the same was notified by the Government of India on 11.11.2011. The said recommendations were put under challenge by various media agencies by way of filing the writ petitions before the Hon'ble Supreme Court of India and the said cases were adjudicated by the Hon'ble Supreme Court of India in February, 2014. It is an admitted fact that the workman himself resigned on 10.02.2012 which clearly shows that on the date of passing of the judgment by the Hon'ble Apex Court the claimant was no more employee of the answering managements as such the claimant is not entitled for any such claim for arrears of wages. The submission of resignation is admitted by the claimant himself. It is well settled proposition of law that the admission is the best evidence. The claimant has concealed the material fact that at the time of leaving the answering managements after putting the resignation had accepted all the service benefits from the answering managements and nothing remained pending / due and as such the claimant has no right to contest the present claim petition. The procedure under the scheme of the Act 1955 aggrieved employee seeking to recover any amount due under the Act 1955 is required to first move an application before the State Government. As per Rule 36 of the Act 1955 such an application is required to be made in prescribed form 'C' addressed to the Secretary to the State Government along with details of amount claimed, preceded by 15 days prior notice regarding payment to the concerned newspaper establishment. In the case in hand no such application along with the details of amount claimed much less in the prescribed format was made to the Secretary of the State Government. No 15 days prior notice was issued under Rule 36 of the Act 1955. Thus, in the absence of fulfilling the conditions precedent for initiating the action under Section 17, legally no proceedings could have been initiated by the workman against the management. Hence, the proceeding in question is void ab-initio. The alleged claim statement is hopelessly time barred. The demand notice dated 07.10.2016 stated to be served upon the management was presented before the Deputy Commissioner, Chandigarh whereas the Deputy Commissioner was not competent authority as the same was to be presented before the Secretary to Government (Labour Department) as per Section 17 of the Act 1955. The demand notice was referred to Assistant Labour Commissioner, U.T. Chandigarh vide order dated 01.02.2018 passed by the Deputy Commissioner, Chandigarh after considering the reply filed by the answering management. The managements are taking the specific objection that any demand notice is not maintainable before the Labour Commissioner, Chandigarh. It is well settled law that a civil suit does not lie after the expiry of three years of cause of action. In the present case the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February, 2018 for the benefits claimed by the workman for the period of 2012. The claimant had annexed the calculation sheet showing the turn-over of the management only to get the benefit from the managements which is a dispute in question of fact and cannot be decided in summary proceedings before the Hon'ble Tribunal as such the present claim is liable to be dismissed. Furthermore, the basis of computation of the amount as claimed by the claimant has not been indicated and the identity of the person who has computed the said amount has not been revealed by the claimant. Hence, the same is frivolous and baseless. The answering managements do have the spirit to honour the judgment delivered by the Hon'ble Supreme Court of India but in the present case the claimant is not entitled to any benefit in compliance with the judgment delivered by the Hon'ble Supreme Court of India. Above all, the claim in the instant case is not maintainable under the provisions of Section 17 of the Act 1955.

5. Further on merits, it is stated that the fact of appointment of workman, his employee code and provident account number mentioned in the claim statement are matter of record. The claimant does not fall within the definition of 'workman' as defined under Section 2(s) of the ID Act and the claimant does not fall within the definition of 'workman' as he was performing the duties under the supervisory capacity. It is a matter of record that the workman remained in continuous and un-interrupted service of the management till 10.02.2012

on which date the claimant himself resigned from the said post. The constitution of the Majithia Wage Board, the recommendations submitted by the Majithia Wage Board to the Central Government on 31.12.2010 and its acceptance by the Government of India on 25.10.2011 and notification in the gazette of Government of India on 11.11.2011 are matter of record. The fact that the said recommendations were challenged in writ petition(C) No.246/2011 before the Hon'ble Supreme Court is a matter of record. The directions of the Hon'ble Supreme Court issued in judgment dated 07.02.2014 are matter of record. The claimant is not entitled for any of the benefits in compliance with the judgments delivered by the Hon'ble Supreme Court of India. The issuance of demand notice dated 07.10.2016, filing of reply to the demand notice and filing of replication dated 21.09.2017 to the demand notice is a matter of record. The fact that contempt petition No.411/2014 was disposed off by the Hon'ble Supreme Court vide order dated 13.10.2017 is matter of record. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with exemplary costs.

6. The workman filed replication wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 15.04.2019:-

1. Whether the arrears of revision of pay to Shri Bharat Shankar were to be paid by the managements, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether Shri Bharat Shankar does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Whether the claim of Shri Bharat Shankar is bad on the ground of mis-joinder of necessary party ? OPM
4. Whether the claim of Shri Bharat Shankar is time barred ? OPM
5. Whether the claim of Shri Bharat Shankar is not maintainable under the provisions of Section 17 of the Working Journalists & other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
6. Relief.

8. In evidence, the workman Bharat Shankar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'C1' to Exhibit 'C3'.

**Exhibit 'C1'** is copy of gazette notification dated 11.11.2011 of Government of India, Ministry of Labour & Employment.

**Exhibit 'C2'** is calculation prepared by Arora Khanna & Associates, Chartered Accountants of arrears claimed by the workman.

**Exhibit 'C3'** is copy of judgment dated 19.06.2017 passed by the Hon'ble Supreme Court of India in Contempt Petition (Civil) No.411 of 2014 in Writ Petition (Civil) No.246 of 2011 titled as Avishek Raja & Others Versus Sanjay Gupta.

9. The workman examined AW2 DPS Gill, Chartered Accountant and AW3 Sumanta Ghosh- Senior Assistant, Office of Regional Provident Fund Commissioner, Chandigarh. On 15.09.2021 Learned Representative for the workman closed evidence of the workman.

10. On the other hand, management examined MW1 Aditya Dubey - Senior Manager (HR) & Admin (CPH2), Dainik Bhaskar, Chandigarh, who in his examination-in-chief tendered his affidavit exhibit 'MW1/A' along with documents i.e. copy of his identity card Exhibit 'R1', authority letter Exhibit 'R2', copy of resignation & acceptance letter Exhibit 'R3'; copy of full & final settlement Exhibit 'R4' and payment of gratuity and acknowledgement Exhibit 'R5'. Thereafter, MW1 Aditya Dubey was not presented for his cross-examination. On 23.01.2023 management through its Representative filed an application under Section 151 CPC for substitution of management's witness Aditya Dubey with Avdhesh Gaur and to file a fresh affidavit

of Avdhesh Gaur in management's evidence on the ground that Aditya Dubey has been transferred from Chandigarh to Bhopal due to administrative reasons, due to which he could not be examined in the case. Vide order dated 23.01.2023 the application was allowed and the management was permitted to examine MW Avdhesh Gaur. It is pertinent to mention here that the affidavit Exhibit 'MW1/A' of MW1 Aditya Dubey along with documents Exhibit 'R1' to 'R4' tendered by him cannot be considered into evidence as testimony of MW1 Aditya Dubey is incomplete. Besides, the management has withdrawn his affidavit. Thereafter, the management examined MW1 Avdhesh Gaur - Assistant Manager, HR Admin, O/o Dainik Bhaskar, Sector 25-D, Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M7'.

**Exhibit 'M1'** is identity card of Avdhesh Gaur.

**Exhibit 'M2'** is authority letter dated 20.02.2023 issued in favour of Avdhesh Gaur by DB Corp. Ltd.

**Exhibit 'M3'** is resignation with acceptance dated 25.01.2012.

**Exhibit 'M4'** is full & final slip.

**Exhibit 'M5'** is cheque No.199847 dated 04.05.2012 issued in favour of Bharat Shankar for sum of ₹10,943/-

**Exhibit 'M6'** is payment advice dated 01.08.2012 along with copy of DD 115000 dated 01.08.2012 issued in favour of Bharat Shankar for sum of ₹ 50,769/-.

**Exhibit 'M7'** is declaration dated 15.11.2011.

11. On 04.09.2023 Learned Representative for the management closed oral evidence. On 08.01.2024 Learned Representative for the management closed documentary evidence.

12. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

#### **Issue No. 1:**

13. Onus to prove this issue is on the workman.

14. Under this issue, workman Bharat Shankar examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'C1' to Exhibit 'C3'.

15. In order to prove the calculations of the arrears dues, workman examined AW2 DPS Gill Chartered Accountant, who deposed that he is practicing as chartered accountant for the last so many years and is partner with Arora Khanna and associates a firm of Chartered accountants. The workman had approached him for preparing his detail of arrears of salary on the basis of the recommendation of Majithia Wage Board notified on 11.11.2011 with the subsequent upholding of the same by Hon'ble Supreme Court of India on 07.02.2014. The workman provided him the basic data of wages / salary for preparing of his statement of claim and also copy of recommendations of Majithia Wage Board. The workman had joined the respondent company on 15.01.2001 and left the company in February, 2012. The certificate Exhibit 'C3' has been prepared on the letter head of Arora Khanna & Associates and he has signed the same in the capacity of partner. As per the certificate Exhibit 'C3' the details of arrears appended with the certificate amounts to ₹ 8,99,362/. The details of arrears are prepared from the date of recommendation as detailed by Majithia Wage Board till the resignation of the workman from the respondent company. The complete details of arrears as well as other details are mentioned in Exhibit 'C3' and arrears are calculated in respect of workman are from November, 2011 to February, 2016. The certificate Exhibit 'C3' issued to the workman is true and correct as per details provided by the workman and keeping in view the recommendation of Majithia Wage Board. Exhibit 'C3' is issued on the basis of the details of salary and other details of the workman considering the recommendation of Majithia Wage Board without any pressure from any quarter.

16. The workman examined AW3 Sumanta Ghosh -Senior Assistant, Office of Regional Provident Commissioner, who deposed that he has brought the summoned record in respect of the workman Shri Bharat

Shankar having account No.PB/CHD/20989/359 for the period from April, 2009 till March, 2012. As per their record the workman left the employment on 10.02.2012 and his date of entry of the workman under PF scheme is 15.07.2004. The management i.e. Dainik Bhasker had deducted PF of the workman on wages of ₹ 8,000/-, which remained the same till the workman left on 10.02.2012. Certified copy of the ledger account of the workman is Exhibit 'AW3/1'.

17. On the other hand, management examined MW1 Avdhesh Gaur -Assistant Manager HR Admin, who vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager, HR & Admin with the respondents and has been authorised by the respondent to depose on its behalf in the above said case before this Hon'ble Court. He is well conversant with the facts of the present case. Copy of his identity card and copy of authorization letter issued by the respondent in his favour are Exhibit 'M1' & Exhibit 'M2'. DB Corp. Ltd. is a group of businesses including textile, MY FM, Digital Media, Real Estate, Power, Denim. As per Majithia Wage Board recommendation only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. The claimant / workman does not fall under the definition of 'workman' as per Section 2(s) ii) to iv) of the ID Act, 1947. The claimant has also failed to claim himself as 'workman' as per the provisions of ID Act. As per the nature as well as status of post as he was working as Deputy Manager (Recovery) in F&A Department, the claimant does not fall within the definition of 'workman' under the ID Act. The claimant has presented misleading facts before this Hon'ble Tribunal as on the one hand he claims that he had resigned from duty on 10.02.2012 and on the other hand he claimed that he was in service on the date of judgment passed by the Hon'ble Supreme Court of India i.e. on 07.02.2014. As such the present claim petition is liable to be dismissed with costs. The submission of resignation is admitted by the claimant himself. It is well settled proposition of law that admission is the best evidence. The claimant has concealed the material fact that at the time of leaving the answering respondents after putting the resignation, he had accepted all the service benefits and received full & final amount from the respondents and nothing remained pending / due and as such the claimant has no right to contest the present claim petition being not maintainable. Copy of resignation is Exhibit 'M3'. It is settled law that a civil suit does not lie after expiry of three years of cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February, 2018 for the benefit claimed by the claimant for the period of 2012. The claimant is not entitled for the benefit of the compliance of judgment passed by the Hon'ble Supreme Court of India as prior to passing of judgment by the Hon'ble Apex Court, the claimant had himself resigned from service and also received full & final payment from the respondents. A copy of full & final payment received by the claimant and copy of gratuity paid is Exhibit 'M4' and Exhibit 'M5'. The respondent has fully complied with the provisions of Majithia Wage Board issued by Central Government under notification dated 11.11.2011. The claimant has already received the wages as per para 20(j) of the Majithia Wage Board Recommendations. The claimant has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration now nothing is payable to the claimant as he has already received wages according to option opted by him of para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on the option letter as per their will and submitted it to the management. Copy of undertaking signed by the claimant is Exhibit 'M6' (the document Exhibit 'M6' is incorrectly numbered in the affidavit of MW1 Avdhesh Gaur whereas the payment advice dated 01.08.2012 is Exhibit 'M6' and declaration dated 15.11.2011 regarding option under Clause 20(j) of the notification dated 11.11.2011 is Exhibit 'M7'. Therefore, in order to avoid any ambiguity the document / undertaking mentioned in the affidavit of MW1 Avdhesh Gaur is hereinafter referred as Exhibit 'M7' instead of Exhibit 'M6').

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman is claiming entitlement to arrears of revision of pay on the basis of recommendations of the Majithia Wage Board notified vide notification dated 11.11.2011 of Government of India and *judgment dated 07.02.2014 passed by the Hon'ble Supreme Court in Writ Petition (Civil) No.246/2011* and the *judgment dated 19.06.2017 of Hon'ble Supreme Court in Contempt Petition (Civil) No.411 of 2014 in Writ Petition (Civil) No.246 of 2011* titled as *Avishek Raja & Others Versus Sanjay Gupta*. On the other hand, the management

agitated the claim on the ground that the workman during tenure of his service exercised his option on 15.11.2011 / Exhibit 'M7' under Clause / para 20(j) of the Majithia Wage Board recommendations notified in the gazette of Government of India on 11.11.2011 and opted to retain the existing salary and emoluments. Moreover, the workman tendered resignation on 24.01.2012 through email which was accepted by the management on 25.01.2012 vide Exhibit 'M3'. Above all the workman has received his full & final payment as per full & final settlement Exhibit 'M4', which are supported with payment of ₹ 10943/- vide cheque Exhibit 'M5' and payment of ₹ 50769/- vide demand draft Exhibit 'M6'. It is argued by Learned Representative for the managements that the workman has concealed the material fact that he exercised his option under Clause / para 20(j) of the Majithia Wage Board recommendations in the form of declaration dated 15.11.2011 / Exhibit 'M7' and further concealed the fact that he has received the full & final payment against full & final slip Exhibit 'M4'. In this manner, the workman is misleading the Court. Since the workman has tendered his resignation on 24.01.2012 accepted on 25.01.2012, therefore, the workman is not entitled to the benefits of Majithia Wage Board on the basis of judgment of the Hon'ble Supreme Court which was passed subsequently on 07.02.2014 in WP (C) No.246/2011 and judgment dated 19.06.2017 in Contempt Petition (C) No.411 of 2014. Learned Representative for the workman contended that declaration alleged to be of dated 15.11.2011 / Exhibit 'M7' is a forged and fabricated document and the workman has never signed any such declaration. The management has not relied upon the alleged declaration dated 15.11.2011 / Exhibit 'M7' in the written statement and has produced the same for the first time during its own evidence, depriving the workman of an opportunity to rebut the same.

19. The management has primarily denied the benefits of Majithia Wage Board recommendations to the workman on the basis of the declaration Exhibit 'M7' given under Clause 20(j) of the Majithia Wage Board recommendations. The workman has disputed the genuineness of Exhibit 'M7'. To my opinion, no reliance can be placed upon declaration Exhibit 'M7' for the reason that in the written statement the management did not plead that the workman has exercised his option under Clause 20(j) of Majithia Wage Board recommendations thereby opted to retain the existing pay scale and existing emoluments. The management has also not put declaration Exhibit 'M7' to AW1 / workman in his cross-examination to admit or deny the same. The declaration Exhibit 'M7' is brought into evidence for the first time by the management during examination-in-chief of MW1 Avdhesh Gaur. In cross-examination of MW1, Learned Representative for the workman taken the plea that the alleged declaration is forged and fabricated and the workman had not signed the same. The management has failed to give any explanation that in case declaration Exhibit 'M7' was available with the management at the time of filing written statement then why it was not mentioned in the written statement and why the same was not produced along with the written statement and why the same was not put to AW1 in his cross-examination. In this regard, MW1 Avdhesh Gaur in his cross-examination has admitted as correct that self declaration Form 20(j) is available with the management of all the employees of the management. MW1 denied the suggestion as wrong that the workman had not signed Form 20(j) and they have forged his signatures on the same form. MW1 in his cross-examination further stated that he does not know if the management had appended with the written statement any Form 20(j) or that there is no mention about Form 20(j) in the written statement. MW1 denied the suggestions as wrong that Form 20(j) produced by the witness in the Court is forged document as the signatures on Form 20(j) are not matching with his signatures on the claim, replication and affidavit Exhibit 'AW1/A' submitted in evidence. Since the workman during cross-examination of MW1 has denied his signatures on declaration Exhibit 'M7' accompanied with the fact that the declaration Exhibit 'M7' has not been put to the workman / AW1 in his cross-examination, thus it was required for the management to get the standard signatures of the workman compared with the disputed signatures on declaration Exhibit 'M7' from Forensic Expert but the same has not been done. Therefore, the genuineness of declaration Exhibit 'M7' is not proved.

20. Learned Representative for management No. 1 to 5 argued that the workman after his resignation Exhibit 'M3' has already received his full & final payment against full & final settlement slip Exhibit 'M4', along with payment of ₹ 10,943/- through cheque Exhibit 'M5' and payment of ₹ 50,769/- through demand draft

Exhibit 'M6' therefore, workman is estopped from claiming the benefits of Majithia Wage Board. On the other hand, Learned Representative for the workman argued that the documents Exhibit 'M3' to Exhibit 'M6' cannot be read into evidence as the same are computer generated or photocopies of the documents. To my opinion, as far as objection to admissibility of documents Exhibit 'M3' to Exhibit 'M6' is concerned, the objection was not taken when the said documents were tendered by MW1 Avdhesh Gaur in his examination-in-chief. Furthermore, the workman has failed to controvert the fact that he resigned from service and his resignation was accepted by the management and that he received the payments as per Exhibit 'M4'. It is also not the plea of the workman during cross-examination of MW1 that the workman did not receive the payments against cheque Exhibit 'M5' and demand draft Exhibit 'M6'. Therefore, the objection to the admissibility of documents Exhibit 'M3' to Exhibit 'M6' is not sustainable.

21. In view of the foregoing discussion, it is established that the workman after resignation from his services has received the outstanding dues as full & final settlement as per his existing salary and not in accordance with the salary calculation as per the Majithia Wage Board recommendations. In the absence of declaration under para 20(j) of the Majithia Wage Board recommendations, the full & final settlement receipt Exhibit 'M4' does not disentitle the workman to claim the arrears of his salary according to the Majithia Wage Board recommendations. In the details of arrears Exhibit 'C3' the difference of salary / wages due as per the Majithia Wage Board recommendations and the salary actually drawn is not shown. On the other hand, there is no counter calculation sheet of the management. Therefore, the workman is entitled to the wages for the period from 11.11.2011 to February, 2012 as per the Majithia Wage Board recommendations after deduction of wages drawn by him during the said period.

22. Accordingly, this issue is proved in favour of the workman and against management No.1 to 5.

#### Issue No. 2:

23. Onus to prove this issue is on management No.1 to 5.

24. Learned Representative for management No.1 to 5 argued that the claimant-workman does not fall within the definition of the 'workman' as defined under Section 2(s) of the ID Act as the nature of the work assigned to the claimant was supervisory. On the other hand, Learned Representative for the workman argued that the workman was not having any managerial or supervisory position. The claimant was not having any power to appoint / dismiss any employee and also had no power to grant leave to any employee. To support his arguments Learned Representative for the workman referred case law reported in **2006(4) SCT 1** titled as ***Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah*** in para 11 to 13 held as below:—

*"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.*

*12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.*

*13. The precise question came up for consideration in ***Ananda Bazar Patrika (P) Ltd. v. Workmen I(1970)3 SCC 248I*** wherein it was held :*

*"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly*

*doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.....*

*A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.*

*Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. Ananda Bazar Patrika (supra) was followed by the court in large number of cases."*

25. In the present case, it is undeniable fact that the workman was appointed to the post of Executive. The management has failed to bring on record any oral or documentary evidence to show that the workman was discharging any kind of supervisory or managerial or administrative functions. In the absence of aforesaid evidence, it cannot be said that the claimant was exercising powers of control or supervision. The judgment **2006(4) SCT 1 (supra)** is applicable to the facts of the present case to an extent. Consequently, the management has failed to prove that the claimant had any authority to initiate departmental proceedings against the subordinates or he had power of control or supervision in regard to recruitment, promotion etc. The management even failed to prove that the workman had authority to sanction leave to any employee. Therefore, Bharat Shankar is a 'workman' as defined under Section 2(s) of the ID Act.

26. Accordingly, this issue is decided against management No. 1 to 5 and in favour of the workman.

#### **Issue No. 3:**

27. Onus to prove this issue is on management No.1 to 5. During course of arguments this issue is not pressed by management No.1 to 5.

28. Accordingly, this issue is decided against management No. 1 to 5 and in favour of the workman.

#### **Issue No. 4:**

29. Onus to prove this issue is on the management.

30. Learned Representative for management No.1 to 5 contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February, 2018 for the benefit claimed by the claimant for the year 2012. On the other hand, Learned Representative for the claimant argued that the claimant is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Secretary Labour, Chandigarh Administration on 26.07.2018. Thus, the claim of the claimant is well within time in as much as the cause of action in the present case is reoccurring in nature.

31. As proved from the documents on judicial file, the workman raised the application under Section 17(1) of the Act 1955 before the Labour Commissioner, U.T. Chandigarh on 09.01.2017 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication

to this Tribunal / Court vide reference dated 11.07.2018 bearing endorsement dated 26.07.2018. Moreover, the contention raised by Learned Representative for the workman carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

32. Accordingly, this issue is decided against management No. 1 to 5 and in favour of the workman.

**Issue No.5:**

33. Learned Representative for management No.1 to 5 argued that that the present claim statement is not maintainable as the demand notice stated to be served upon the management was presented before the Deputy Commissioner, Chandigarh whereas the Deputy Commissioner, was not competent authority and the same was to be presented before the Secretary to Government (Labour Department) as per Section 17 of the Act, 1955. To my opinion, the aforesaid argument advanced by the Learned Representative for the managements carries no force as the perusal of the record would show that vide order dated 01.02.2018 Deputy Commissioner-cum-Collector, Chandigarh issued directions to the parties to appear before the Assistant Labour Commissioner, U.T. Chandigarh to represent their respective claims in the matter and the Assistant Labour Commissioner was directed to hear the parties and to adjudicate the matter promptly as per direction given by the Hon'ble Apex Court in judgment dated 04.10.2016 in CP(C) No.411/2014 in Writ Petition (C) No.246 / 2011. Thereafter, the Assistant Labour Commissioner, U.T. Chandigarh vide its orders endorsement No.ST/ 2018/2789 dated 26.06.2018 on matter being unsettled before ALC, U.T. Chandigarh under Section 17(1) of the Act, 1955 referred the matter for final adjudication to the Labour Court, as per Section 17(2) of the Act, 1955. From the above mentioned documents due compliance of Section 17 of the Act, 1955 is proved.

34. Accordingly, this issue is proved against management No.1 to 5 and in favour of the workman.

**Relief :**

35. In the view of foregoing finding on the issues above, this reference is allowed and answered in favour of the workman to the effect that the workman is held entitled to the wages for the period from 11.11.2011 to February, 2012 as per the Majithia Wage Board recommendations after deduction of wages drawn by him during the said period. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 09.01.2024.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

**Notification**

The 21st March, 2024

**No. 13/1/9524-HII(2)-2024/4749.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **75/2018** dated **09.01.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MANISH VERMA S/O SH. SUBHASH VERMA, R/O H.NO.357, BHUMIA WALI GALI, MARZA ROAD, SHANTI NAGAR, SHAMLI (UTTAR PRADESH). (Workman)

AND

1. THE DAINIK BHASKAR CORPORATION LIMITED, 280, BHASKAR HOUSE, NEAR YMCA CLUB, MAKARBA, SARKHEJ GANDHI NAGAR ROAD, AHMEDABAD 380051 (REGISTERED OFFICE).
2. THE DAINIK BHASKAR CORPORATION LIMITED, DAINIK BHASKAR, HEAD OFFICE, 6, PRESS COMPLEX, RAM GOPAL MAHESHWARI MARG, ZONE-1, MAHARANA PARTAP NAGAR, BHOPAL, M.P (HEAD OFFICE) THROUGH IT'S
  - A) RAMESH CHANDER AGGARWAL, CHAIRMAN,
  - B) SUDHIR AGGARWAL, MANAGING DIRECTOR,
  - C) GARISH AGGARWAL, MANAGING DIRECTOR,
  - D) PAWAN AGGARWAL, MANAGING DIRECTOR.
3. THE DAINIK BHASKAR CORPORATION LIMITED, PLOT NO. 11-12, SECTOR 25, CHANDIGARH THROUGH ITS ASSISTANT GENERAL MANAGER HR CPH2.
4. THE DAINIK BHASKAR CORPORATION LIMITED, DAINIK BHASKAR, PLOT NO. 11-12, SECTOR 25, CHANDIGARH THROUGH ITS AND PUBLISHER.
5. THE DAINIK BHASKAR CORPORATION LIMITED, PLOT NO. 11-12, SECTOR 25, CHANDIGARH THROUGH ITS FINANCE HEAD, REPORTING AUTHORITY OF THE CLAIMANT. (Management)

**AWARD**

1. Vide Endorsement No.13/1/9524-HII(2)-2018/14450 Dated 27.07.2018 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the claim application filed by Manish Verma (*here-in-after referred "workman"*) to The Dainik Bhaskar Corporation Limited & Others (*here-in-after referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*here-in-after in short referred "Act 1955"*) in following words :-

*"Whether the arrears of revision of pay to Sh. Manish Verma, S/o Sh. Subhash Verma, R/o House No.357, Bhumia Wali Gali, Marza Road, Shanti Nagar, Shamli (Uttar Pardesh) (Applicant/Claimant) were to be paid by 1. The Dainik Bhaskar Corporation Limited, 280, Bhaskar House, Near YMCA Club, Makarba, Sarkhej-Gandhi Nagar Road, Ahmedabad 380051 (Registered Office). 2. The Dainik Bhaskar Corporation Limited, Dainik Bhaskar, Head Office, 6, Press Complex, Ram Gopal Maheshwari Marg, Zone-1, Maharana partap Nagar, Bhopal, M.P (Head Office) through it's a) Ramesh Chander Aggarwal, Chairman, b) Sudhir Aggarwal, managing Director, c) Garish Aggarwal, Managing Director, d) Pawan*

*Aggarwal, Managing Director. 3. The Dainik Bhaskar Corporation Limited, Plot No. 11-12, Sector 25, Chandigarh through its Assistant General Manager HR CPH2. 4. The Dainik Bhaskar Corporation Limited, Dainik Bhaskar, Plot No. 11-12, Sector 25, Chandigarh through its and Publisher. 5. The Dainik Bhaskar Corporation Limited, Plot No. 11-12, Sector 25, Chandigarh through its Finance Head, Reporting authority of the claimant (Respondents) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"*

2. Upon notice, the claimant-workman appeared in person and thereafter through his Representative. On 05.12.2018, statement of claim was filed.

3. Briefly stated the averments of claim statement are that vide appointment letter dated 03.03.2008 the workman was appointed as Accounts & Recovery Executive on 16.02.2008 by Dainik Bhaskar on yearly salary of ₹ 80,400/. The service of workman remained in continuous, uninterrupted without any stopgap and unblemished till 02.03.2016 on which date the workman himself resigned from the said post. On 04.03.2009 the Central Government in exercise of powers under Sections 9 & 13 of the Working Journalists & Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (here-in-after in short referred as 'Act 1955) constituted Majithia Wage Board for provision and revision of pay scales and other benefits for the working journalists and non-journalists working in printing media. The said Majithia Wage Board submitted its recommendations to the Central Government on 31.12.2010 and same was accepted by the Government of India on 25.10.2011 and notified the same vide SO No.2532(E) dated 11.11.2011. The said recommendations were challenged by various parties of media before the Hon'ble Supreme Court in writ petition (C) No.246/2011 tilted ABP Pvt. Ltd. & Others Versus Union of India & Others and other connected writ petitions. The Hon'ble Supreme Court vide its judgment dated 07.02.2014 upheld the above said notification of Government of India which was based on the recommendation of the Majithia Wage Board and dismissed the writ petitions filed by various parties. As evident from this judgment of Hon'ble Supreme Court of India, directions in that were also issued for the payment of wages as revised / determined from 11.11.2011 i.e. the arrears up to March 2014 to be paid to all eligible persons in 4 equal installments within a period of one year from the date of judgment and continue to pay the revised wages from April 2014 onwards. The workman was in service as on the date of above said judgment of Hon'ble Supreme Court of India but he was not given the benefits as per the above said notification and the judgment of the Hon'ble Supreme Court rather he continued to receive whatever lump sum was being paid to him. It was due to this reason that the workman had to resign from his service. The workman is covered by the recommendations of the Majithia Wage Board as accepted by the Government of India as per notification dated 11.11.2011 which was affirmed by the Hon'ble Supreme Court of India and as such the workman is entitled for provisions and revision of revised pay scale / wages w.e.f. 11.11.2011 till 02.03.2016. Instead of implementing the above said notification and the judgment of Hon'ble Supreme Court, the authorities of Dainik Bhaskar have been forcing its employees including workman to sign a declaration stating that we are happy with the current wages and do not want the benefits of the recommendations of the Majithia Wage Board or that of the directions of the Hon'ble Supreme Court dated 07.02.2014 failing which they would be transferred to other places that too in other States. Despite the said notification and judgment of the Hon'ble Supreme Court of India, the workman has not been paid the arrears of his revised pay w.e.f. 11.11.2011 to 02.03.2016. The personal visits, contacts and requests of the workman to the management for making him the payment of arrears remained futile and as such constrained him to adopt this process of law. As per the above said notification the pay scale, salary of the workman is required to be fixed as per Table - II B - Non-journalists (Administrative Staff) (Page 36) in the pay scale of Group IV i.e. ₹ 11,000/- + annual rate of increments at the rate of 4% -24,100/- with variable pay of 35% of basic pay, DA as admissible biannually, HRA @ 20% of basic pay, medical allowance of ₹ 500/- per month fixed and transport allowance @ 10% of basic pay as the annual turn-overs of the management remained in between 500 to 1000

crores for the year 2007-08, year 2008-09 and year 2009-10 for which the workman is entitled and eligible. In this connection calculation sheet prepared and authenticated by the registered Chartered Accountant on the basis of annual turn overs for the year 2007-08, 2008-09, 2009-10 generated against ID number of workman is enclosed with the claim statement. In view of the above, the arrears including the interim relief of the workman from 11.11.2011 to 02.03.2016 work out to ₹ 38,53,314/- as per the calculation sheet for which the workman is entitled and eligible. The emolument has not paid the above mentioned dues to the workman and deliberately delayed in making the payment of the same. The workman is entitled to interest @18% per annum on the same w.e.f. 11.11.2011 till the date of actual payment. In response to demand notice dated 07.10.2016 the management filed reply to which the replication dated 21.09.2017 was also filed by the workman before the Labour Commissioner, U.T. Chandigarh. The above said notification was not implemented by the managements of different print medias, a number of contempt petition remained filed before the Hon'ble Supreme of India attached with the main content petition No.411 of 2014 which were disposed off by the Hon'ble Supreme Court of India vide order dated 13.10.2017. A number of references remained pending before the Labour Authorities / Labour Courts for all these years regarding non-payment of arrears and wages to the working journalists and non-journalists. The Hon'ble Supreme Court of India passed another order dated 13.10.2017 in miscellaneous application No.187 of 2017 in the said contempt petition (c) No.411 of 2014 therewith ordering the concerned Labour Court / Industrial Tribunals to dispose of matters as expeditiously as possible, preferably within 6 months of the reference being made. The workman is entitled and eligible to all the arrears including the interim relief as worked out and authenticated by the Chartered Accountant as per the calculation sheet enclosed with the claim statement. In view of the facts & circumstances, the workman has been deprived of his due arrears including interim relief by the management that too without assigning any reason and deliberately, the claim application deserves to be decided at the earliest by this Hon'ble Court. The prayer is made that the claim statement may be allowed in favour of the workman and against the management with directions No.i) to the management to pay all the arrears (including interim relief) and interest @18% per annum w.e.f. 11.11.2011 till the date of actual payment as per the calculation sheet attached with the claim statement. ii) to the appropriate authority (Labour Commissioner/Deputy Commissioner) to issue the recover certificate accordingly in the interest of justice and other orders or directions as deemed fit and proper may be issued in favour of the workman.

4. On notice, management No.1 to 5 contested the claim statement by filing joint written statement on 01.03.2019 wherein preliminary objections are raised on the ground that the workman has filed fresh claim petition claiming the arrears of wages for the period of 11.11.2011 to 31.08.2014 as per the recommendation of the Majithia Wage Board by putting the wrong facts as well as by levelling the pass allegations and by presenting the fabricated calculation sheet before this Tribunal and as such the present claim petition is liable to be dismissed with exemplary costs. Besides, the workman does not fall under the definition of 'workman' as per Section 2(s) ii to iv) of the ID Act. Further objection is taken on the ground that the claim petition is liable to be dismissed on the ground of mis-joinder of necessary party as the alleged services rendered by the workman with the answering respondent i.e. Chief Manager HR (who has not been impleaded as party in the present claim petition) and the authorities of Head Office have been impleaded by name. The submission of resignation is admitted by the claimant himself. It is well settled proposition of law that the admission is the best evidence. The claimant has concealed the material fact that at the time of leaving the answering managements after putting the resignation had accepted all the service benefits from the answering managements. And nothing remained pending / due and as such the claimant has no right to contest the present claim petition. The procedure under the scheme of the Act 1955 aggrieved employee seeking to recover any amount due under the Act 1955 is required to first move an application before the State Government. As per Rule 36 of the Act 1955 such an application is required to be made in prescribed form 'C' addressed to the Secretary to the State Government along with details of amount claimed, preceded by 15 days prior notice regarding payment to the concerned newspaper establishment. In the case in hand no such application along with the details of amount claimed much less in the prescribed format was made to the Secretary of the State Government. No 15 days prior notice was issued under Rule 36 of the Act 1955. Thus, in the absence of fulfilling the conditions precedent for initiating the action under Section 17, legally no proceedings could have been initiated by the workman against the management. Hence, the proceeding in question is void ab-initio. The alleged

claim statement is hopelessly time barred. The demand notice dated 07.10.2016 stated to be served upon the management was presented before the Deputy Commissioner, Chandigarh whereas the Deputy Commissioner was not competent authority as the same was to be presented before the Secretary to Government (Labour Department) as per Section 17 of the Act 1955. The demand notice was referred to Assistant Labour Commissioner, U.T. Chandigarh vide order dated 01.02.2018 passed by the Deputy Commissioner, Chandigarh after considering the reply filed by the answering management. The managements are taking the specific objection that any demand notice is not maintainable before the Labour Commissioner, Chandigarh. It is well settled law that a civil suit does not lie after the expiry of three years of cause of action. In the present case the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February, 2018 for the benefits claimed by the workman for the period of 2012 to 2014. The claimant had annexed the calculation sheet showing the turn-over of the management only to get the benefit from the managements which is a dispute in question of fact and cannot be decided in summary proceedings before the Hon'ble Tribunal as such the present claim is liable to be dismissed. Furthermore, the basis of computation of the amount as claimed by the claimant has not been indicated and the identity of the person who has computed the said amount has not been revealed by the claimant. Hence, the same is frivolous and baseless. The employees who have signed 20J of the Majithia Wage Board Recommendations on their own accord are not entitled to Majithia Wage Board Recommendations. The respondent-management has fully complied with the provision of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant-workman has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board at his own voluntarily. Now nothing is payable to the claimant-workman as he has already received wages according to option opted by him. The claimant-workman had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking which he had given within the specified time of 3 weeks. Now after lapse of long time the claimant-workman is raising dispute of non-payment of wages as per the Majithia Wage Board recommendations which is a simply after thought, illegal and baseless. Since the year, 1956 various wage boards have been constituted from time to time and option has been given to the employees to opt for payment of existing pay scale and existing emoluments in all these aforesaid various wage boards. The employees were informed about the Majithia Wage Board recommendations and para 20(j) of the same for payment of the existing pay scale and existing emoluments by affixing copy of the Majithia Wage Board recommendations and notice on the notice board of the company. The applicant-claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations and has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board recommendations. The employer has paid the wages as per para 20(j) of Majithia Wage Board recommendations and no alleged amount of ₹ 38,53,314/- is due. The claim of the claimant-workman is not maintainable under the provisions of Section 17 of the Act 1955 as no amount is due and further the amount, as claimed by the applicant, is based on non-existing right.

5. Further on merits, it is stated that the fact of appointment of workman and his salary in the claim statement are matter of record. The claimant-workman does not fall within the definition of 'workman' as defined under Section 2(s) of the ID Act and the claimant does not fall within the definition of 'workman' as he was performing the duties under the supervisory capacity. It is a matter of record that the workman remained in continuous and un-interrupted service of the management till 02.03.2016 on which date the claimant himself resigned from the said post. The constitution of the Majithia Wage Board, the recommendations submitted by the Majithia Wage Board to the Central Government on 31.12.2010 and its acceptance by the Government of India on 25.10.2011 and notification in the gazette of Government of India on 11.11.2011 are matter of record. The fact that the said recommendations were challenged in writ petition(C) No.246/2011 before the Hon'ble Supreme Court is a matter of record. The directions of the Hon'ble Supreme Court issued in judgment dated 07.02.2014 are matter of record. The answering respondent-managements do have the spirit to honour judgment delivered by the Hon'ble Supreme Court of India but the claimant is not entitled for any benefit in compliance of judgments delivered by the Hon'ble Supreme Court of India. The issuance of demand notice dated 07.10.2016, filing of reply to the demand notice and filing of replication dated 21.09.2017 to the demand notice is a matter of record. The fact that contempt petition No.411/2014 was disposed off by the Hon'ble Supreme Court vide order dated 13.10.2017 is matter of record. Further similar stand is taken as taken

in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with exemplary costs.

6. The workman filed replication wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 15.04.2019 :-

1. Whether the arrears of revision of pay to Shri Manish Verma were to be paid by the managements, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether Shri Manish Verma does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Whether the claim of Shri Manish Verma is bad on the ground of mis-joinder of necessary party ? OPM
4. Whether the claim of Shri Manish Verma is time barred ? OPM
5. Whether the claim of Shri Manish Verma is not maintainable under the provisions of Section 17 of the Working Journalists & other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
6. Relief.

8. In evidence, the workman Manish Verma examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'C1' to Exhibit 'C4'.

**Exhibit 'C1'** is copy of appointment letter dated 03.03.2008 issued to the workman.

**Exhibit 'C2'** is copy of gazette notification dated 11.11.2011 of Government of India, Ministry of Labour & Employment.

**Exhibit 'C3'** is calculation prepared by Arora Khanna & Associates, Chartered Accountants of arrears claimed by the workman.

**Exhibit 'C4'** is copy of judgment dated 19.06.2017 passed by the Hon'ble Supreme Court of India in Contempt Petition (Civil) No.411 of 2014 in Writ Petition (Civil) No.246 of 2011 titled as Avishek Raja & Others Versus Sanjay Gupta.

9. The workman examined AW2 DPS Gill, Chartered Accountant and AW3 Sumanta Ghosh - Senior Assistant, Office of Regional Provident Fund Commissioner, Chandigarh. On 15.09.2021 Learned Representative for the workman closed evidence of the workman.

10. On the other hand, management examined MW1 Aditya Dubey - Senior Manager (HR) & Admin (CPH2), Dainik Bhaskar, Chandigarh, who in his examination-in-chief tendered his affidavit exhibit 'MW1/A' along with documents i.e. copy of his identity card Exhibit 'R1', authority letter Exhibit 'R2', copy of resignation & acceptance letter Exhibit 'R3'; copy of full & final settlement Exhibit 'R4' and payment of gratuity and acknowledgement Exhibit 'R5'. Thereafter, MW1 Aditya Dubey was not presented for his cross-examination. On 23.01.2023 management through its Representative filed an application under Section 151 CPC for substitution of management's witness Aditya Dubey with Avdhesh Gaur and to file a fresh affidavit of Avdhesh Gaur in management's evidence on the ground that Aditya Dubey has been transferred from Chandigarh to Bhopal due to administrative reasons, due to which he could not be examined in the case. Vide order dated 23.01.2023 the application was allowed and the management was permitted to examine MW Avdhesh Gaur. It is penitent to mention here that the affidavit Exhibit 'MW1/A' of MW1 Aditya Dubey along with documents Exhibit 'R1' to 'R4' tendered by him cannot be considered into evidence as testimony of MW1 Aditya Dubey is incomplete. Besides, the management has withdrawn his affidavit. Thereafter, the management examined MW1 Avdhesh Gaur - Assistant Manager, HR Admin, O/o Dainik Bhaskar, Sector 25-D, Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M7'.

**Exhibit 'M1'** is identity card of Avdhesh Gaur.

**Exhibit 'M2'** is authority letter dated 20.02.2023 issued in favour of Avdesh Gaur by DB Corp. Ltd. **Exhibit 'M3'** is resignation with acceptance dated 05.02.2016 (the scrutiny of Exhibit 'M3' would reveal that it was accepted on 04.02.2016 and forwarded on 05.02.2016).

**Exhibit 'M4'** is full & final statement.

**Exhibit 'M5'** is cheque No.453410 dated 28.04.2016 issued in favour of Manish Verma for sum of ₹1,554/-.

**Exhibit 'M6'** is payment advice dated 27.06.2016 along with copy of DD 009217 dated 24.06.2016 issued in favour of Manish Verma for sum of ₹ 36,743/-.

**Exhibit 'M7'** is declaration dated 15.11.2011.

11. On 04.09.2023 Learned Representative for the management closed oral evidence. On 08.01.2024 Learned Representative for the management closed documentary evidence.

12. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

**Issue No. 1 :**

13. Onus to prove this issue is on the workman.

14. Under this issue, workman Manish Verma examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'C1' to Exhibit 'C4'.

15. In order to prove the calculations of the arrears dues, workman examined AW2 DPS Gill Chartered Accountant, who deposed that he is practicing as chartered accountant for the last so many years and is partner with Arora Khanna and associates a firm of Chartered accountants. The workman had approached him for preparing his detail of arrears of salary on the basis of the recommendation of Majithia Wage Board notified on 11.11.2011 with the subsequent upholding of the same by Hon'ble Supreme Court of India on 07.02.2014. The workman provided him the basic data of wages / salary for preparing of his statement of claim and also copy of recommendations of Majithia Wage Board. The workman had joined the respondent company on 16.02.2008 and left the company in February, 2016. The certificate Exhibit 'C3' has been prepared on the letter head of Arora Khanna & Associates and he has signed the same in the capacity of partner. As per the certificate Exhibit 'C3' the details of arrears appended with the certificate amounts to ₹ 38,53,324/- . The details of arrears are prepared from the date of recommendation as detailed by Majithia Wage Board till the resignation of the workman from the respondent company. The complete details of arrears as well as other details are mentioned in Exhibit 'C3' and arrears are catrialtd in respect of workman are from November, 2011 to February 2016. The cetrilcate Exhibit 'C3' issued to the workman is true and correct as per details provided by the workman and keeping in view the recommendation of Majithia Wage Board. Exhibit 'C3' is issued on the basis of the details of salary and other details of the workman considering the recommendation of Majithia Wage Board without any pressure from any quarter.

16. The workman examined AW3 Sumanta Ghosh - Senior Assistant, Office of Regional Provident Commissioner, who deposed that he has brought the summoned record in respect of the workman Shri Manish Verma having account No.PB/CHD/20989/802 for the period from April 2010 till January 2016. As per their record the workman left the employment on 02.03.2016 and his date of entry of the workman under PF scheme is 01.03.2010. The management i.e. Dainik Bhasker had deducted PF of the workman on wages of ₹ 4,100/-, which kept on changing in the subsequent year. Certified copy of the ledger account of the workman is Exhibit 'AW3/1'.

17. On the other hand, management examined MW1 Avdhesh Gaur - Assistant Manager HR Admin, who vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager, HR & Admin with the respondents and has been authorised by the respondent to depose on its behalf in the above said case before this Hon'ble Court. He is well conversant with the facts of the present case. Copy of his identity card and copy of authorization letter issued by the respondent in his favour are Exhibit 'M1' & Exhibit 'M2'. DB

Corp. Ltd. is a group of businesses including textile, MY FM, Digital Media, Real Estate, Power, Denim. As per Majithia Wage Board recommendation only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. The claimant / workman does not fall under the definition of 'workman' as per Section 2(s) ii) to iv) of the ID Act, 1947. The claimant has also failed to claim himself as 'workman' as per the provisions of ID Act. As per the nature as well as status of post, the claimant does not fall within the definition of 'workman' under the ID Act. The claimant has presented misleading facts before this Hon'ble Tribunal as on the one hand he claims that he had resigned from duty on 04.02.2016 and on the other hand he claimed that he was in service on the date of judgment passed by the Hon'ble Supreme Court of India i.e. on 07.02.2014. As such the present claim petition is liable to be dismissed with costs. The submission of resignation is admitted by the claimant himself. It is well settled proposition of law that admission is the best evidence. The claimant has concealed the material fact that at the time of leaving the answering respondents after putting the resignation, he had accepted all the service benefits and received full & final amount from the respondents and nothing remained pending / due and as such the claimant has no right to contest the present claim petition being not maintainable. Copy of resignation is Exhibit 'M3'. It is settled law that a civil suit does not lie after expiry of three years of cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February, 2018 for the benefit claimed by the claimant for the period of 2012. The claimant is not entitled for the benefit of the compliance of judgment passed by the Hon'ble Supreme Court of India as prior to passing of judgment by the Hon'ble Apex Court, the claimant had himself resigned from service and also received full & final payment from the respondents. A copy of full & final payment received by the claimant and copy of gratuity paid is Exhibit 'M4' and Exhibit 'M5'. The respondent has fully complied with the provisions of Majithia Wage Board issued by Central Government under notification dated 11.11.2011. The claimant has already received the wages as per para 20(j) of the Majithia Wage Board Recommendations. The claimant has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration now nothing is payable to the claimant as he has already received wages according to option opted by him of para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on the option letter as per their will and submitted it to the management. Copy of undertaking signed by the claimant is Exhibit 'M6'. It is pertinent to mention here that in the affidavit Exhibit 'MW1/A' and while recording examination-in-chief of MW1 the payment advice dated 27.06.2016 along with the copy of DD 009217 dated 04.06.2016 was tendered as Exhibit 'M6' (colly.) whereas copy of aforesaid DD has been given separate Exhibit number Exhibit 'M7' while making endorsement of exhibits and declaration dated 15.11.2011 has been endorsed Exhibit 'M8' instead of Exhibit 'M7'. In cross-examination of MW1 declaration dated 15.11.2011 is put to the witness as Exhibit 'M8'. Therefore, in order to avoid any ambiguity DD No.009217 dated 24.06.2016 and declaration dated 15.11.2011 are hereby renumbered as Exhibit 'M7' and Exhibit 'M8' respectively.

18. From the oral as well as documentary evidence led by the parties, it comes out that the workman is claiming entitlement to arrears of revision of pay on the basis of recommendations of the Majithia Wage Board notified vide notification dated 11.11.2011 of Government of India and *judgment dated 07.02.2014 passed by the Hon'ble Supreme Court in Writ Petition (Civil) No.246/2011 and the judgment dated 19.06.2017 of Hon'ble Supreme Court in Contempt Petition (Civil) No.411 of 2014 in Writ Petition (Civil) No.246 of 2011* titled as *Avishek Raja & Others Versus Sanjay Gupta*. On the other hand, the management agitated the claim on the ground that the workman during tenure of his service exercised his option on 15.11.2011 / Exhibit 'M8' under Clause / para 20(j) of the Majithia Wage Board recommendations notified in the gazette of Government of India on 11.11.2011 and opted to retain the existing salary and emoluments. Moreover, the workman tendered resignation on 04.02.2016 through email which was accepted by the management on 04.02.2016 vide Exhibit 'M3'. Above all the workman has received his full & final payment as per full & final settlement Exhibit 'M4', which are supported with payment of ₹ 1,554/- vide cheque No.453410 dated 28.04.2016 Exhibit 'M5' and payment of ₹ 36,743/- vide demand draft No.009217 dated 24.06.2016 Exhibit 'M7'. It is argued by Learned Representative for the managements that the workman has concealed the material fact that he exercised his option under Clause / para 20(j) of the Majithia Wage Board

recommendations in the form of declaration dated 15.11.2011 / Exhibit 'M8' and further concealed the fact that he has received the full & final payment against full & final slip Exhibit 'M4'. In this manner, the workman is misleading the Court. Since the workman has tendered his resignation on 04.02.2016 accepted on 04.02.2016, therefore, the workman is not entitled to the benefits of Majithia Wage Board on the basis of judgment of the Hon'ble Supreme Court which was passed subsequently on 07.02.2014 in WP (C) No.246/2011 and judgment dated 19.06.2017 in Contempt Petition (C) No.411 of 2014. Learned Representative for the workman contended that declaration alleged to be of dated 15.11.2011 / Exhibit 'M8' is a forged and fabricated document and the workman has never signed any such declaration. Though the management has relied upon the alleged declaration dated 15.11.2011 / Exhibit 'M8' in the written statement but the same is not put to the workman / AW1 in his cross-examination and has produced the same for the first time during its own evidence, depriving the workman of an opportunity to rebut the same.

19. The management has primarily denied the benefits of Majithia Wage Board recommendations to the workman on the basis of the declaration Exhibit 'M8' given under Clause 20(j) of the Majithia Wage Board recommendations. The workman has disputed the genuineness of Exhibit 'M8'. To my opinion, no reliance can be placed upon declaration Exhibit 'M8' for the reason that the management has not put declaration Exhibit 'M8' to AW1 / workman in his cross-examination to admit or deny the same. The declaration Exhibit 'M7' is brought into evidence for the first time by the management during examination-in-chief of MW1 Avdhesh Gaur. In cross-examination of MW1, Learned Representative for the workman taken the plea that the alleged declaration is forged and fabricated and the workman had not signed the same. The management has failed to give any explanation that in case declaration Exhibit 'M8' was available with the management at the time of filing written statement then why the same was not produced along with the written statement and why the same was not put to AW1 in his cross-examination. In this regard, MW1 Avdhesh Gaur in his cross-examination has admitted as correct that self declaration Form 20(j) is available with the management of all the employees of the management. MW1 denied the suggestion as wrong that the workman had not signed Form 20(j) and they have forged his signatures on the same form. MW1 examined by the management was not conversant with the contents of the written statement filed by the management. In this regard, MW1 in his cross-examination stated that he has not read over the reply filed by the management in the present case. He has not gone through the claim of the workman in the present case. MW1 in his cross-examination further stated that he does not know if the management had appended with the written statement any Form 20(j) or that there is no mention about Form 20(j) in the written statement. In view of the aforesaid version of MW1, the correctness of the facts pleaded in the written statement does not stand proved. MW1 denied the suggestions as wrong that Form 20(j) produced by the witness in the Court is forged document as the workman never signed on Form 20(j). Since the workman during cross-examination of MW1 has denied his signatures on declaration Exhibit 'M8' accompanied with the fact that the declaration Exhibit 'M7' has not been put to the workman / AW1 in his cross-examination, consequently, the genuineness of declaration Exhibit 'M8' is not proved.

20. Learned Representative for management No. 1 to 5 argued that the workman after his resignation Exhibit 'M3' has already received his full & final payment against full & final settlement slip Exhibit 'M4', along with payment of ₹ 1,554/- through cheque Exhibit 'M5' and payment of ₹ 36,743/- through demand draft Exhibit 'M7' therefore, workman is estopped from claiming the benefits of Majithia Wage Board. On the other hand, Learned Representative for the workman argued that the documents Exhibit 'M4' and Exhibit 'M6' cannot be read into evidence as the same are computer generated or photocopies of the documents. To my opinion, as far as objection to admissibility of documents Exhibit 'M4' and Exhibit 'M6' is concerned, the objection was not taken when the said documents were tendered by MW1 Avdhesh Gaur in his examination-in-chief. Furthermore, the workman has failed to controvert the fact that he resigned from service and his resignation was accepted by the management and that he received the payments as per Exhibit 'M4'. It is also not the plea of the workman during cross-examination of MW1 that the workman did not receive the payments against cheque Exhibit 'M5' and demand draft Exhibit 'M7'. Therefore, the objection to the admissibility of documents Exhibit 'M4' to Exhibit 'M6' is not sustainable.

21. In view of the foregoing discussion, it is established that the workman after resignation from his services has received the outstanding dues as full & final settlement as per his existing salary and not in accordance with the salary calculation as per the Majithia Wage Board recommendations. In the absence of declaration under para 20(j) of the Majithia Wage Board recommendations, the full & final settlement receipt Exhibit 'M4' does not disentitle the workman to claim the arrears of his salary according to the Majithia Wage Board recommendations. In the details of arrears Exhibit 'C3' the difference of salary / wages due as per the Majithia Wage Board recommendations and the salary actually drawn is not shown. On the other hand, there is no counter calculation sheet of the management. Therefore, the workman is entitled to the wages for the period from 11.11.2011 to February 4, 2016 as per the Majithia Wage Board recommendations after deduction of wages drawn by him during the said period.

22. Accordingly, this issue is proved in favour of the workman and against management No.1 to 5.

**Issue No. 2 :**

23. Onus to prove this issue is on management No.1 to 5.

24. Learned Representative for management No.1 to 5 argued that the claimant-workman does not fall within the definition of the 'workman' as defined under Section 2(s) of the ID Act as the nature of the work assigned to the claimant was supervisory. On the other hand, Learned Representative for the workman argued that the workman was not having any managerial or supervisory position. The claimant was not having any power to appoint / dismiss any employee and also had no power to grant leave to any employee. To support his arguments Learned Representative for the workman referred case law reported in **2006(4) SCT 1** titled as **Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shailesh kumar Harshadhai Shah** in para 11 to 13 held as below :-

*"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.*

*12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.*

*13. The precise question came up for consideration in **Ananda Bazar Patrika (P) Ltd. v. Workmen** [(1970)3 SCC 248] wherein it was held :*

*"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.....*

*A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.*

*Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. Ananda Bazar Patrika (supra) was followed by the court in large number of cases."*

25. In the present case, it is undeniable fact that the workman was appointed to the post of Accounts & Recovery Executive. The management has failed to bring on record any oral or documentary evidence to show that the workman was discharging any kind of supervisory or managerial or administrative functions. In the absence of aforesaid evidence, it cannot be said that the claimant was exercising powers of control or supervision. The judgment **2006(4) SCT 1 (supra)** is applicable to the facts of the present case to an extent. Consequently, the management has failed to prove that the claimant had any authority to initiate departmental proceedings against the subordinates or he had power of control or supervision in regard to recruitment, promotion etc. The management even failed to prove that the workman had authority to sanction leave to any employee. Therefore, Manish Verma is a 'workman' as defined under Section 2(s) of the ID Act.

26. Accordingly, this issue is decided against management No. 1 to 5 and in favour of the workman.

**Issue No. 3 :**

27. Onus to prove this issue is on management No.1 to 5. During course of arguments this issue is not pressed by management No.1 to 5.

28. Accordingly, this issue is decided against management No. 1 to 5 and in favour of the workman.

**Issue No. 4 :**

29. Onus to prove this issue is on the management.

30. Learned Representative for management No.1 to 5 contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2018 for the benefit claimed by the claimant for the year 2012 to 2014. On the other hand, Learned Representative for the claimant argued that the claimant is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Secretary Labour, Chandigarh Administration on 27.07.2018. Thus, the claim of the claimant is well within time in as much as the cause of action in the present case is reoccurring in nature.

31. As proved from the documents on judicial file, the workman raised the application under Section 17(1) of the Act 1955 before the Labour Commissioner, U.T. Chandigarh on 09.01.2017 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal / Court vide reference bearing endorsement dated 27.07.2018. Moreover, the contention raised by Learned Representative for the workman carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

32. Accordingly, this issue is decided against management No. 1 to 5 and in favour of the workman.

**Issue No. 5 :**

33. Learned Representative for management No.1 to 5 argued that that the present claim statement is not maintainable as the demand notice stated to be served upon the management was presented before the Deputy Commissioner, Chandigarh whereas the Deputy Commissioner, was not competent authority and the same was to be presented before the Secretary to Government (Labour Department) as per Section 17 of the Act, 1955. To my opinion, the aforesaid argument advanced by the Learned Representative for the managements

carries no force as the perusal of the record would show that vide order dated 01.02.2018 Deputy Commissioner-cum-Collector, Chandigarh issued directions to the parties to appear before the Assistant Labour Commissioner, U.T. Chandigarh to represent their respective claims in the matter and the Assistant Labour Commissioner was directed to hear the parties and to adjudicate the matter promptly as per direction given by the Hon'ble Apex Court in judgment dated 04.10.2016 in CP(C) No.411/2014 in Writ Petition (C) No. 246 / 2011. Thereafter, the Assistant Labour Commissioner, U.T. Chandigarh vide its orders endorsement No. ST/2018/2810 dated 26.06.2018 on matter being unsettled before ALC, U.T. Chandigarh under Section 17(1) of the Act, 1955 referred the matter for final adjudication to the Labour Court, as per Section 17(2) of the Act, 1955. From the above mentioned documents due compliance of Section 17 of the Act, 1955 is proved.

34. Accordingly, this issue is proved against management No.1 to 5 and in favour of the workman.

**Relief :**

35. In the view of foregoing finding on the issues above, this reference is allowed and answered in favour of the workman to the effect that the workman is held entitled to the wages for the period from 11.11.2011 to February 4, 2016 as per the Majithia Wage Board recommendations after deduction of wages drawn by him during the said period. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No. PB0152.

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Secretary Labour,  
Chandigarh Administration.

**CHANGE OF NAME**

I, Babita, W/o Gurmeet Singh, R/o House No. 104, Village Behlana, Chandigarh, have changed my name to Vijay.

[443-1]

I, Hirani Devi, W/o Upinder Mehto, R/o H. No. 1204, Small Flats, Dhanas, Chandigarh, have changed my name to Pramila.

[444-1]

I, Rajendheran, S/o Ramaswamy # 1570, Mauli Jagran Complex, Chandigarh, have changed the name of my minor daughter from Manjula to Manju.

[445-1]

I, Ashif, S/o Mohd Yunus # 450, Mauli Jagran, Chandigarh, have changed my name to Mohd Ashif.

[446-1]

I, Naresh Ram, S/o Ram Lal, R/o 1554, Chaman Colony, Dhanas, Chandigarh, have changed my name from Naresh Ram to Ram Naresh.

[447-1]

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